



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Street address: 629 East Main Street, Richmond, Virginia 23219

Mailing address: P.O. Box 1105, Richmond, Virginia 23218

TDD (804) 698-4021

www.deq.virginia.gov

L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

(804) 698-4000
1-800-592-5482

MINUTES STATE WATER CONTROL BOARD

October 16-17, 2008
House Room C
General Assembly Building
9th & Broad Streets
Richmond, Virginia

Board Members Present:

W. Shelton Miles, III, Chair
R. Michael McKenney
W. Jack Kiser
Robert H. Wayland, III

Komal K. Jain, Vice-Chair
Thomas D. C. Walker
John B. Thompson

Staff Present:

David K. Paylor, Director
Department of Environmental Quality

Cindy M. Berndt
Department of Environmental Quality

Attorney General's Office:

Alfred B. Albiston, Assistant Attorney General

- 1) The attached minutes summarize activities that took place at this Board Meeting.
- 2) The meeting was convened on October 16, 2008, at 9:30 a.m., recessed at 12:35 p.m., reconvened at 1:35 p.m., recessed at 2:50 p.m., reconvened at 3:00 and recessed for the day at 5:20 p.m. The meeting was reconvened on October 17, 2008, at 9:32 a.m., recessed at 12:05 p.m., reconvened at 12:55 p.m. and adjourned at 2:35 p.m.

Approved Minute No. 1
Apr. 27, 2009



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON OCTOBER 16-17, 2008

MINUTE NO. 1 – Minutes

The Board approved the minutes from the meeting on July 29, 2008.


Cindy M. Berndt



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON OCTOBER 16-17, 2008

Minute No. 2 – Budget Briefing

The Board received a report from Mr. David K. Paylor on the recent budget reductions announced by the Governor.



Cindy M. Berndt



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DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE

Preston Bryant
Secretary of Natural Resources

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David K. Paylor
Director

Thomas A. Faha
Regional Director

EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON OCTOBER 16-17, 2008

Minute No. 3 -Issuance of Virginia Water Protection (VWP) Individual Permit No. 07-0860 – Cutalong LLC – Cutalong Development- Louisa County

DEQ staff made a presentation for the issuance of a VWP Individual Permit for the Cutalong project to the State Water Control Board. Staff briefed the Board on the proposed project, environmental conditions, proposed impacts, and compensation outlined in the draft permit. Staff summarized the concerns, which related to water withdrawal and dredging, within the VWP Permit Program purview received during the two comment periods and staff's response to comments. Staff directed the Board to the summary of comments enclosed in the Board package for a more comprehensive list of comments and staff's responses. Staff briefed the Board on the changes that were made to the original draft permit in response to citizen concerns and on four changes that were made to the draft permit after it was submitted in the Board package in response to new sediment data.

Following the presentation, the Board asked questions, which were addressed by staff. After questions from the Board, Paul Lerner of Cutalong LLC addressed the Board.

Staff then recommended that the Board issue the permit as provided in their Board package with edits to Special Conditions Part I.K.1., Part I.L.1., Part I.L.2., and Part I.N.1.

A motion was made to issue the permit as found in the Board package with edits to Special Condition Part I.K.1., Part I.L.1., Part I.L.2., and Part I.N.1.

Board Decision

The Board, based on the Board book material and presentations at the meeting, voted unanimously in favor of staff's recommendation.

A handwritten signature in cursive script, reading "Thomas A. Faha".

Thomas A. Faha
Director, Northern Regional Office



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON OCTOBER 16-17, 2008

MINUTE NO. 4 – Amendments to the Water Quality Standards (9 VAC 25-260) for Triennial Review

Alan Pollock of the Office of Water Quality Programs summarized the amendments, reviewed the key public comments and agency response to those comments, and responded to questions about the proposal from the Board. All of the public comments were presented in the Board memo. The rulemaking contains many amendments and the more significant ones were presented to the Board. These included a narrative criterion for swamp waters (Class VII waters), revised and new numerical criteria to protect human health and aquatic life, a recommendation to retain the existing freshwater bacteria criteria but establish the geometric mean as the environmentally relevant endpoint for bacteria, and several new special standards. Much of the discussion focused on a proposed special standard for bacteria in the James River from the fall line in Richmond downriver to its confluence with the Appomattox River (proposed special standard "ii"). The City of Richmond requested the special standard to ensure water quality standards were achieved after the Long Term Control Plan to address their Combined Sewer System was completed.

Oral comment was presented to the Board by the following individuals:

Christopher Beschler, Acting Chief Administrative Officer and Public Utilities Director for the City of Richmond, stated the City's support for special standard ii. He explained to the Board the considerable financial investment the City has made, and will continue to make, to achieve the goal of bringing the Combined Sewer Outfalls (CSOs) into regulatory compliance and that the special standard provides a regulatory endpoint that can be achieved.

Jeff Scarano spoke on behalf of the City of Lynchburg to ask the Board to consider either statewide bacteria criteria based on the higher risk level or a site specific bacteria criterion for the James River through Lynchburg that would provide a regulatory endpoint that can be achieved after their CSO plan is completed.

Joe Tannery spoke on behalf of the Chesapeake Bay Foundation (CBF) in opposition to special standard ii and stated that the City's finances are a concern but environmental and recreational uses are of greater concern. CBF questions the City's bacteria modeling results and has

concluded there is not enough information before the public to make the decision to approve the special standard.

Dick Sedgley spoke on behalf of the Virginia Association of Municipal Wastewater Agencies (VAMWA) in support of the higher statewide bacteria criterion and stated that the financial expenditure does not justify the 0.2% increase in public health protection and that the criterion, though somewhat higher than the current, is considered by EPA to be protective of primary contact recreation.

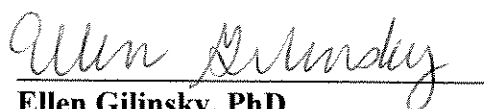
David Sligh spoke as a representative of the Alliance for the Chesapeake Bay and the Southern Environmental Law Center stating their support of the existing statewide bacteria criteria and their opposition to a higher special standard for the James River in Richmond and Lynchburg. He stated that the financial issues regarding compliance goals should not be ignored but the public health is the most important issue.

During the Board discussion several members expressed concern over establishing higher bacteria criteria for the James River below Richmond and a willingness to support the City if, and when, questions arise whether the CSO control program suffices as the City's contribution toward attaining water quality standards.

Decision:

Based upon the information provided to the Board and the staff recommendation, the Board by a unanimous vote approved the following actions:

1. Adopt the amendments to the Water Quality Standards at 9 VAC 25-260 as presented in Attachment 4 with the exception of removing special standard "ii" from the proposal;
2. Direct staff to reevaluate the existing bacteria criteria to determine if revisions are appropriate once EPA publishes new or revised bacteria criteria, currently anticipated by 2012.
3. Direct staff to reconvene the triennial review ad hoc advisory committee to consider updates to aquatic life criteria for ammonia, copper, cadmium, cyanide and lead in § 9 VAC 25-260-140, Criteria for Surface Waters, and consider the need for a prohibition of any new or expanded mixing zones for persistent bioaccumulative toxic substances in § 9 VAC 25-260-20, General Criteria and Mixing Zones; and,
4. Direct staff to form an ad hoc advisory group to assist agency permitting staff in the development of guidance on application of § 9 VAC 25-260-30 Antidegradation Policy to Tier I waters.



Ellen Gilinsky, PhD.
Director, Water Division



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EXCERPT FROM THE PROCEEDINGS OF THE BOARD AT ITS MEETING ON OCTOBER 16-17, 2008

MINUTE 5- Development of Virginia's FY 2009 Clean Water Revolving Loan Funding List

Mr. Walter Gills of the Department's Construction Assistance Program, made a presentation to the Board based on a staff memorandum dated September 18, 2008 pertaining to the development of Virginia's Clean Water Revolving Loan Project Priority List and the Intended Use Plan for FY 2009.

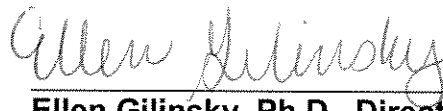
Mr. Gills began by referencing the attachments included with the staff's memorandum providing the Board with a description of the projects being considered and presenting the FY 2009 applicants in priority funding order. The 2009 application pool was very large at \$382.6 million. He noted that there would be approximately \$80 million in base funds available and that there had been several detailed discussions with the Virginia Resources Authority about leveraging those funds in the bond market to create additional capacity to fund projects in the \$250 million range.

Mr. Gills summarized the staff's activities in regards to the review of the applications, including an evaluation of the project schedules, in order to achieve the greatest water quality benefits with available resources. He noted that one of the loan requests was not ready to proceed and could be deferred to a later funding cycle. Mr. Gills also pointed out that six projects could be phase funded to meet cash flow needs without disrupting construction schedules. He stated that, through a leveraged loan program, the Board would have sufficient revenue available to fund the \$258.7 million for requests that provide direct water quality benefits and are ready to proceed.

Following discussions, the Board voted unanimously to:

1. Target the following applicants for loan assistance from available and anticipated funds and authorize the staff to present the Board's proposed FY 2009 loan project priority list for public comment.

City of Waynesboro	\$16,531,255
City of Lynchburg	\$14,000,000
Frederick - Winchester SA	\$20,535,000
City of Richmond	\$10,000,000
City of Galax	\$1,408,000
HRSD James River	\$10,000,000
HRSD Nansemond	\$23,619,220
Alexandria Sanitation Authority	\$3,500,000
City of Norfolk	\$7,500,000
Arlington County	\$35,000,000
Stafford County	\$24,163,010
Rivanna Water & Sewer Authority	\$20,000,000
Augusta County Service Authority	\$10,345,526
City of Falls Church	\$4,100,000
HRSD Interceptor Metering	\$24,237,250
City of Salem	\$7,488,600
Town of Berryville	\$8,000,000
Alleghany County	\$4,518,316
Town of Elkton	\$3,490,000
City of Norton	\$1,514,370
Nelson County Service Authority	\$52,885
Town of Lovettsville	\$2,500,000
City of Newport News	\$5,200,000
BET Wilkinson Salem Venture, LLC	\$1,000,000
FY 2009 VCWRLF Total	\$258,703,432.00


Ellen Gilinsky, Ph.D., Director
Division of Water



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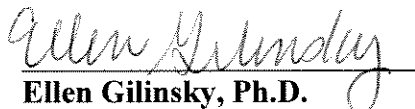
EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT IT'S MEETING ON OCTOBER 16-17, 2008

MINUTE NO. 6 - General Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation for Potable Water Treatment Plant, 9 VAC 25- 860

The staff recommended that the board adopt the proposed 9 VAC 25-860, General VPDES Permit Regulation for Potable Water Treatment Plants. The staff also recommended that the board receives, consider or respond to petitions by any interested person at any time with respect to reconsideration or revision of this regulation.

Board Decision

Based on the briefing material and the staff presentation, the Board voted unanimously to adopt the proposed 9 VAC 25-860, General VPDES Permit Regulation for Potable Water Treatment Plants. The Board also voted to receive, consider and respond to petitions by any time with respect to reconsideration or revision of this regulation.


Ellen Gilinsky, Ph.D.
Director, Water Division



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS OCTOBER 16-17, 2008 MEETING

MINUTE NO. 7 – Proposed Rulemaking to Amend 9 VAC 25-720-120.C. (Water Quality Mgmt. Planning Regulation, York River Basin Nutrient Waste Load Allocations)

John Kennedy/DEQ Chesapeake Bay Program Manager made the staff presentation on proposed amendments to revise the total nitrogen (TN) and total phosphorus (TP) waste load allocations (WLAs) assigned to the New Kent Co.-Parham Landing STP (VA0088331), a significant discharger in the York River Basin. Current WLAs in the Water Quality Management Planning Regulation for the facility were adopted by the Board in November 2005.

BACKGROUND: By letter dated 6/5/08, New Kent County petitioned for decreased nutrient WLAs for their Parham Landing STP, which is now in design for upgrade and expansion. The County originally planned to increase the design flow from 0.57 to 3.0 MGD, and now intends to only raise the design flow to 2.0 MGD. Funds saved by constructing the smaller plant will be used to build a reuse system that will provide bulk irrigation water to aid in preventing groundwater shortages in the area. The sizing change results in lower discharged nutrient WLAs; the TN allocation will decrease by 18,273 lbs/yr (from 54,820 to 36,547 lbs/yr) and the TP allocation will decrease by 2,132 lbs/yr (from 6,396 to 4,264 lbs/yr). The County asked that since this request is expected to be non-controversial, that the rulemaking be "fast-tracked". The effect of the proposed amendments is as follows:

VA Water Body ID	VPDES	Total Nitrogen WLA (lbs/yr)	Total Phosphorus WLA (lbs/yr)
F14R	VA0088331	54,820	6,396
		36,547	4,264

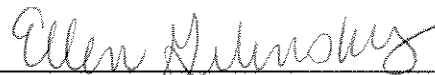
Notes: (1) Parham Landing WWTP: waste load allocations (WLAs) based on a design flow capacity of 3-0 2.0 million gallons per day (MGD). If plant is not certified to operate at 3-0 2.0 MGD design flow capacity by 12/31/10, the WLAs will decrease to TN = 10,416 lbs/yr; TP = 1,215 lbs/yr, based on a design flow capacity of 0.57 MGD.

CURRENT STATUS:

- Agency Response to Petition for Rulemaking published in the Virginia Register on 8/4/08.
- Public Comment Period closed 8/25/08; no comments received.
- On 9/30/08, Attorney General's Office certified the Board's authority to take the proposed action

STAFF RECOMMENDATIONS and BOARD ACTION: The Board unanimously approved the following staff recommendations for amendments to the Water Quality Management Planning Regulation, 9 VAC 25-720-120.C, as proposed:

1. That the Board authorize the Department to promulgate the attached proposal for public comment, using the fast-track process established in § 2.2-4012.1 of the Administrative Process Act for regulations expected to be non-controversial. The Board's authorization should also be understood to constitute its adoption of the regulation at the end of the public comment period provided that (i) no objection to use of the fast-track process is received from 10 or more persons, or any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, and (ii) the Department does not find it necessary, based on public comments or for any other reason, to make any changes to the proposal.
2. That the Board authorize the Department to set an effective date 15 days after close of the 30-day public comment period provided (i) the proposal completes the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act and (ii) the Department does not find it necessary to make any changes to the proposal.
3. Should the proposal fail to complete the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act or changes to the proposal be needed, it is recommended that the Board authorize the Director to make the decision under 9 VAC 25-10-30.C. concerning the use of the participatory approach or alternatives.



Ellen Gilinsky, Ph.D
Director, Water Division



Date



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON OCTOBER 16 - 17, 2008

MINUTE NO. 8 - Virginia Water Protection Permit Program Regulation Amendments

The Board was provided with the revisions to the Virginia Water Protection Permit Program regulation as the result of statute changes enacted by the 2008 General Assembly. David Davis summarized the changes related to the additional exclusion for agricultural impoundments from VWP permitting in State Water Control Law §62.1-44.15:21 H (Impacts to Wetlands). In summary, no VWP permit is required for the construction and maintenance of agricultural or silvicultural ponds or impoundments that meet specific criteria in the Virginia Soil and Water Conservation Board code §10.0-604 et seq.

The new Code numbering for Title 3.2 - AGRICULTURE, ANIMAL CARE, AND FOOD (formerly Title 3.1) was also revised in the regulation's definition of Normal Agricultural Activities.

In addition, revisions were made to several of the forms in the Forms section, such as form titles and version dates. He asked the board members for their approval of the proposed revisions to the above regulations.

Board Decision

Based on the briefing material and the staff presentation, the Board voted unanimously to allow the Department to finalize the proposed revisions to the Virginia Water Protection Permit Program Regulation 9 VAC 25-210 et seq., as presented by the staff.

A handwritten signature in cursive script, reading "Ellen Gilinsky".

Ellen Gilinsky, Ph.D.
Director, Water Division



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING OF OCTOBER 16 - 17, 2008

MINUTE NO. 9 - Discharges of Storm Water Associated With Industrial Activity VPDES General Permit Reissuance

Prior to the meeting the Board was provided with a draft of the amended regulation and a memorandum summarizing the proposed changes to the General VPDES Permit for Storm Water Discharges Associated With Industrial Activities (9 VAC 25-151). Burt Tuxford gave a brief overview of the proposed regulation amendments.

Board Decision

Based on the briefing material and the staff presentation, the Board voted unanimously to authorize the staff to advertise a public comment period and hold a public hearing on the draft regulation amendment for 9 VAC 25-151.

A handwritten signature in cursive script, reading "Ellen Gilinsky".

**Ellen Gilinsky, Ph.D., Director
Water Division**



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON OCTOBER 16-17, 2008

MINUTE NO. 10 – Report on Facilities in Significant Noncompliance

Kathleen O'Connell, Water Enforcement Program Manager, presented to the Board the Report on Facilities in Significant Noncompliance for the quarter ending March 31, 2008. The facilities listed, their owners, and the reported instances of noncompliance were:

1. Ronile, Inc., Ronile Wastewater Treatment Facility – Failure to meet Oil and Grease permit effluent limit. (An intermittent violation, which was immediately corrected, and where no environmental damage was noted, led staff to the conclusion that formal enforcement action was not necessary in this case.)
2. City of Franklin, Franklin Sewage Treatment Plant – Failure to meet Total Recoverable Copper permit effluent limits. (A modification of the permit has revised the Copper limits, which the City is expected to be able to consistently meet, making enforcement action unnecessary.)

The Board accepted the report.

A handwritten signature in cursive script, reading "Kathleen F. O'Connell".

Kathleen F. O'Connell
Water Enforcement Program Manager
Division of Enforcement



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON OCTOBER 16-17, 2008

MINUTE NO. 11 – VPDES Consent Special Orders

Kathleen O'Connell, Water Enforcement Program Manager, presented to the Board the Consent Special Orders for:

1. Leisure Capital Corporation
2. Ennis Paint, Inc.
3. Richard Haywood, d/b/a shells Unlimited
4. Guttermann Iron & Metal Corporation
5. U.S. Army and Alliant Techsystems, Inc.
6. Dixon Lumber Company, Incorporated
7. Town of Elkton
8. City of Winchester

The Board unanimously approved the Orders and further authorized the Department's Director, or his designee, to execute the Orders on the Board's behalf and to refer violations of the Orders to the Office of the Attorney General for appropriate legal action.

A handwritten signature in cursive script, reading "Kathleen F. O'Connell", written over a horizontal line.

Kathleen F. O'Connell
Water Enforcement Program Manager
Division of Enforcement



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON OCTOBER 16-17, 2008

MINUTE NO. 12 – VWP Consent Special Orders

Kathleen O'Connell, Water Enforcement Program Manager, presented to the Board the Consent Special Orders for:

1. Dismal Swamp Properties, LLC
2. City of Newport News
3. Mr. & Mrs. C. Russo

The Board unanimously approved the Orders and further authorized the Department's Director, or his designee, to execute the Orders on the Board's behalf and to refer violations of the Orders to the Office of the Attorney General for appropriate legal action.

A handwritten signature in cursive script, reading "Kathleen F. O'Connell".

Kathleen F. O'Connell
Water Enforcement Program Manager
Division of Enforcement



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON OCTOBER 16-17, 2008

MINUTE NO. 13 – Oil Consent Special Orders

Kathleen O'Connell, Water Enforcement Program Manager, presented to the Board the Consent Special Orders for:

1. Black Stallion, LLC
2. Snow Family, LLC
3. Baltimore Tank Lines, Inc.

The Board unanimously approved the Orders and further authorized the Department's Director, or his designee, to execute the Orders on the Board's behalf and to refer violations of the Orders to the Office of the Attorney General for appropriate legal action.

A handwritten signature in cursive script, reading "Kathleen F. O'Connell".

Kathleen F. O'Connell
Water Enforcement Program Manager
Division of Enforcement



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March 17, 2009

EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON October 16-17, 2008

MINUTE NO. 14 – Smith Mountain Lake Virginia Water Protection Permit

Joe Hassell, Environmental Program Manager, presented the project background to the Board. He indicated that this project required a Virginia Water Protection Permit because a section 401 certification was needed to renew its Federal Energy Regulatory Commission License. Chairman Miles announced that he would be abstaining from the vote on any matters relating to river flow and lake levels for the proposed permit but he did intend to participate in discussion and votes pertaining to method of the releases and other non-material issues. Mr. Albiston confirmed that Chairman had no legal requirement to abstain entirely from the proceedings on this item.

Upon completion of the staff presentation the Board called for public comment. The following individuals provided comment on the proposed permit: Delegate Clarke Hogan, Delegate Charles Poindexter, Frank M. Simms, Teresa Rogers, J. D. Puckett, Ward Burton, Cole Poindexter, J. T. Davis, Ted Bennett, Chuck Neudorfer, Bill Brush, Ernie Hoach, Chief Jack Gautier, Tom Merriman, Daryl Hatcher, Russ Johnson, Bob Camicia, Kristine Mize, Karen Yee, Marirose Pratt, and Bud Laroche.

Mr. Hassell provided the staff recommendations included in the staff report including the following changes resulting from comments submitted at the public hearing and public comment period (Attachment 1 refers to the attachment in the Board Book):

1. Changed Attachment 1, D.4, to modify Trigger 3 to execute when lake levels reach 791 feet regardless of month, and to correct a typo in the last sentence to "790.5 "'
2. Changed Attachment 1, added D.5, to require that APCO build up a spring surcharge by April 15th each year to the extent that inflows allow, for the Striped Bass spawning season.

3. Changed Attachment 1, changed from D.5 to D.6, and changed three items related to the instream flow rule: (1) revised note number 2, to specify Memorial Day, July 4th, and Labor Day for recreational releases; (2) added a note number 4 to allow APCO to reduce the spawning release after notification by DGIF that the run is complete from May to June flow targets; (3) added notes 5, 6, and 7 to establish maximum release caps during June in a normal year, July during a Trigger 1 or 2 event, and July through November during a Trigger 1 or 2 event.
4. Changed Attachment 1, added H, to outline the requirements of an erosion study and corrective action plan near Leesville Dam.

Scott Kudlas, Director of Surface and Ground Water Supply Planning, provided several proposed amendments to the staff recommendation that did the following (again to Attachment 1):

1. Changed Attachment 1, D.4, to remove the “regardless of month” language relating to the Trigger 3 and replaced it with “after September 30th.
2. Changed Attachment 1, D.6, and changed two items related to the instream flow rule: (1) revised note number 3, to specify Memorial Day, July 4th, and Labor Day for recreational releases; (2) added language to notes 5, 6, and 7 stating “APCO will work with DGIF to study the effect of flow caps on the health of the fishery and provide a report to DEQ as part of the 5-year adaptive management review.”

On the second day of the Board meeting, staff returned with information that reflected the changes outlined above and two changes to reflect the two additional conditions the Board requested staff to work on with the applicant to the text of Attachment 1:

1. Changed Attachment 1, D.3, replacing the 1-hour auto-cycling language with the following: “Within two years of the effective date of the Federal Energy Regulatory Commission License, the permittee shall make releases from Leesville Dam in a constant continuous fashion. The permittee shall release the minimum flows required by condition D.7 below.”
2. Changed Attachment 1, added a new D.4, to address the operating of the project until continuous releases are provided by adding the following: “In the period before implementation of continuous releases called for in condition D.3 above, a generating unit at Leesville Lake shall be operated on an hourly auto-cycle basis to provide the required flow. In case the generating units are out of service, the release may be made from a spillway gate.”
3. Changed Attachment 1, changed from D.4 to D.5. Language unchanged.
4. Changed Attachment 1, changed from D.5 to D.6. Language unchanged.
5. Changed Attachment 1, changed from D.6 to D.7, and removed the language added previously about studying the impact of the flow caps and placed it in the body of the condition.
6. Changed Attachment 1, removed H.

After much discussion, the Chairman asked for a vote to amend the staff recommendation as requested by staff and with an additional amendment to require continuous cycling in Attachment 1, D.3. The Board voted on a motion to accept the staff recommendation as

modified on a 6-1 vote, with Mr. McKenney voting no. A motion was made by Mr. Wayland to reconsider the previous action. The vote on the reconsideration motion was 3-4, with Ms. Jain, Mr. Wayland, Mr. McKenney voting yes and Mr. Thompson, Mr. Walker, Mr. Kiser, and Chairman Miles voting no. The Chairman then called for a vote on the staff recommendation as amended. The motion failed as the vote tied 3-3, Chairman Miles abstaining. At that point, the Board directed staff to work with APCO to develop language on a continuous release condition and on a condition to address the interim operating rules for the project until continuous release is implemented.

After working with staff, the applicant presented their alternative to the Board, suggesting that the Board:

1. Change Attachment 1, D.3, replacing the 1-hour auto-cycling language with the following: "The permittee shall conduct a study to determine the relative impact of providing minimum streamflows through an hourly auto-cycling basis versus a continuous basis. The study plan shall be developed in consultation with DGIF, DEQ, CPR, and TCRC and submitted to the Board by March 2009 for approval. The study shall be conducted on the reach of the Staunton River beginning at the base of the Leesville Dam and extending to the confluence with Goose Creek. The study shall be conducted for a one to three year period. The study shall include a baseline sampling event prior to implementation of the one hour auto-cycling operation. The results of the study shall be submitted to the Board for making a final determination on the method of downstream releases. If the results of the study show that the one hour auto-cycling operation accelerates erosion, then the permittee commits to implementing a continuous release after a reasonable time to acquire and install the appropriate equipment."
2. Change Attachment 1, D.4, changed the interim operation measures to the following: "Until the initiation of the study called for in D.3 above, a generating unit at Leesville Lake shall be operated on a two hour auto-cycle basis to provide the required flow. During the study, a generating unit at Leesville Lake shall be operated on a one hour auto-cycle basis to provide the required flow. In case the generating units are out of service, the release may be made from a spillway gate or other alternative methods available to the permittee."

Still having some concerns with the language, the Board directed the applicant and staff to work some more on the language of Attachment 1, D.3. The Board took a recess for lunch.

After additional discussion between the applicant and staff, the following revised language was presented for SWCB review:

1. Changed Attachment 1, D.3, revising the study language to the following: "The permittee shall conduct a study to determine the relative impact of providing streamflows through hourly auto-cycling compared to continuous releases. The study plan shall be developed in consultation with the Department of Game and Inland Fisheries, the Department of Environmental Quality, the Citizens for the Preservation of the River, and the Tri-County

Re-licensing Committee. This study plan shall be submitted to the Board no later than March 1, 2009 for approval. The study shall be conducted in the reach of the Staunton River beginning at the base of the Leesville Dam and extending to the confluence with Goose Creek. The study shall be conducted for no less than one year with the final study schedule to be approved by the Board. The study plan shall be designed to investigate the potential effects of hourly auto-cycling releases on bank erosion, water quality, and fishery and benthic habitat, recreation, public safety, or other factors determined by the Board. The results of this study shall be submitted to the Board for making a final determination on the method of downstream releases. Should the determination of the Board, based on the results of the study, be that the permittee shall implement continuous flow releases that will be deemed as mitigation. Should the determination of the Board, based on the results of the study, be that hourly auto-cycling continue by the permittee, the Board may require the permittee to implement other forms of mitigation, including stream restoration for those portions of the reach studied. If any of these mitigation actions are required, such actions shall be implemented by the permittee in accordance with a schedule approved by the Board.”

2. Changed Attachment 1, D.4, revising the interim operation language to the following: “Until the initiation of, and during, the study called for in D.3 above, a generating unit at Leesville Lake shall be operated on a one hour auto-cycling basis to provide the required flows. In case the generating units are out of service, the release may be made by spillway gate or other alternative methods available to the permittee.”

In discussion, the Board continued to discuss the language of condition D.3. In developing the final amended language the Board further revised the condition D.3 as follows:

1. Changed Attachment 1, D.3, revising the language regarding how the Board will consider the report in two places from “based on the results of the report” to “after it reviews the report.”

In addition, the SWCB made two findings required by law and stated for the record why they deviated from the staff recommendation, as follows:

1. When conducted in accordance with the conditions approved as Attachment 1, the proposed project is consistent with the provisions of the Clean Water Act and the State Water Control Law and will protect instream beneficial uses.
2. The conditions approved as Attachment 1, give full consideration to the written recommendations of State advisory agencies, were developed with their consultation, and that these conditions balance instream and offstream uses.
3. The reason for the variation to the staff recommendation is that the new provisions are agreed to by the applicant and are consistent with the requirements of the State Water Control Law to protect instream beneficial uses.

The Board voted to adopt the staff recommendation as amended with new language in items D. 3 and D.4, and the motion was amended to include adoption of the 3 findings with amended language of finding 1 and 2 (change “staff recommendation” to “conditions approved”) on a 6-0 vote with Chairman Miles abstaining.

Board Decision:

The Board made the required findings of law and approved the Virginia Water Protection Individual Permit Number 08-0572 with the conditions contained in Attachment 1, as amended.

A handwritten signature in black ink, reading "Ellen Gilinsky". The signature is fluid and cursive, with the first name "Ellen" and last name "Gilinsky" clearly distinguishable.

Ellen Gilinsky, Ph. D.
Director, Water Division



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON OCTOBER 16-17, 2008

Minute No. 15 – Public Forum

No one appeared during the public forum.



Cindy M. Berndt



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON OCTOBER 16-17, 2008

MINUTE NO. 16 – Alternatives Analysis

At its meeting on July 29, 2008, the Board approved a proposed regulation for public comment entitled "Protection of Eastern Shore Tidal Waters for Clams and Oysters." This proposed regulation establishes a special water quality standard that requires applicants for individual Virginia Pollutant Discharge Eliminations System (VPDES) permits to determine if an alternative with less of an impact to shellfish waters is available to their proposed discharge into Eastern Shore waters. The Board also requested information about promulgating a statewide alternatives analysis requirement. Pursuant to the request, Mr. Rick Linker, Policy Coordinator, discussed the legal authority, options, timing and resource implications to a proposal to expand the requirement statewide.

The Board asked that staff put this on the agenda in the fall of 2009 to discuss this issue again.


Rick R. Linker



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON OCTOBER 16-17, 2008

Minute No. 17 – Future Meetings

The Board set December 4-5, 2008, as the date of their next meeting.



Cindy M. Berndt



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON OCTOBER 16-17, 2008

Minute No. 18 – Public Hearings on Regulations

Ms. Cindy M. Berndt briefed the Board on changes to § 62.1-44.26 of the State Water Control Law passed during the 2008 General Assembly. Ms. Berndt explained that as a result of the changes, a Board member was no longer required to attend a public hearing on a proposed regulation.

The Board, based on the discussions at the meeting, unanimously (1) decided that the Board would determine, at the time a proposal was presented for their consideration, whether a member should chair the public hearing on a proposal and (2) agreed that a member would chair the public hearing on a proposal when requested to do so by the Director.


Cindy M. Berndt